IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO.129 OF 1995

Suresh Vithoba Gangode
age 35 years, R/o Paregaon and
also at Vani, Taluka Dindori,
Dist. Nashik. .. Appellant
(Org.Accused)

Vs.

The State of Maharashtra .. Respondent

Mr. Vinod V. Savaji h/f Mr. P.B. Shah for appellant.
Dr. F.R. Shaikh, APP for Respondent-State.

CORAM: S.S. PARKAR & ANOOP V. MOHTA, JJ.

Date : February 02, 2005.

P.C.:

1. This appeal is filed challenging the Judgment and Order dated 20th Feburary, 1995 delivered by the III Addl. Sessions Judge, Nashik convicting the appellant for the offence under Section 302 of IPC and sentencing him to RI for life and to pay a fine of Rs.500/- in default RI for 6 months in Sessions Trial No.116 of 1994.

2. Briefly narrated the prosecution case is as follows:-

. The appellant was married to deceased Shali.

The couple had three issues. The appellant was originally resident of Paregaon. Three months before the incident, appellant had gone to stay in the neighbourhood of his parents-in-law along with his wife and children in village Vani which was at a distance of about 2 kms. from village Paregaon. Both the appellant and deceased-wife were woking as labourers in a brick-kiln of one Nivrutti Kumbhar. Shali had two more sisters, one of whom i.e. Suman was staying along with her husband Devidas Dhule near her house in Vani. On 31st May 1993 at about 6 O'clock in the morning appellant along with his wife Shali went to the hillock called "Markandey Dongar" for the purpose of collecting firewood leaving the children in the house of father of Shali. As the couple did not return home that day, on the following day P.W. 3 Kalu Wagh lodged missing report at the Vani Police Station which is produced on record at Exh.20. Since after the lodging of the said report police were trying to trace the couple but the whereabouts of neither appellant nor his wife Shali were known for a period of one month.

3. On 2nd July 1993 Head Constable Jadhav and Police Constable Shevare attached to Vani Police Station noticed the appellant at the motor stand of

Vani. They accosted the accused and brought him to the police station. On interrogation by the A.P.I. Gavali, appellant told him that he had gone to the Jungle of Markendeshwar Hillock for collecting firewood. He was suspecting illict relationship between his wife and Devidas Dhule, the husband of his wife's sister and therefore had killed his wife. A.P.I. Gavali called father of Shali who had lodged missing report to identify the dead body. Entry was made in the station diary and the police along with panchas, photographer and father of Shali went in a jeep towards the said hillock. The jeep was stopped near the hillock and thereafter accused led the police and panchas to the place on the hillock where he had killed his wife. The dead body was traced by the accused from near a tree. The dead body was in a decomposed state. The head of Shali was also separated and the dead body was found in the form of skeleton of bones. Blouse worn by the dead body was in torn condition. Similarly, saree found on the dead body was in torn condition. The broken bangles were found near the dead body. One cloth bundle was found in which some clothes were found. The slippers, sickle and a piece of saree were also found near the dead body. The father of the deceased as well as her brother by name Punjaram had identified the dead body

to be of Shali. Thereafter the accused was brought to the police station. A.P.I. lodged his own F.I.R. Exh.59 and arrested the accused after registering the crime for offence under Section 302 of IPC. Inquest panchanama of the dead body as well as spot panchanama was prepared and the articles found near the dead body were seized under seizure panchanama.

4. The dead body was sent for post mortem examination. The statements of the parents of the deceased, sister and brother of the deceased were recorded. Statements of other witnesses from the village, who had last seen the couple going towards the said hillock, were also recorded on 3rd July 1993. After his arrest the accused was interrogated on 6th July 1993 when he showed his willingness to produce axe which was hidden by him in the field of Sampat Jadhav which was situated on the outskirts of village Paregaon. The accused thereafter took the police and panchas to the field of Sampat Jadhav and produced axe (article 16) which was hidden in the Bamboo fencing. The same was seized under seizure panchanama Exh.61. After the arrest of the accused his clothes from his person were seized. The clothes of the deceased i.e. the piece of saree and torn blouse as well as bunch of hair found near the dead body and the clothes of the

accused and the axe discovered at the instance of the accused amongst other articles were sent to the C.A. for examination. After the completion of the investigation, chargesheet was filed and the case was committed to the Sessions Court.

5. Before the Sessions Court, charge was framed against the accused for offence under Section 302 of IPC, to which he pleaded not guilty. On behalf of the prosecution 11 witnesses were examined. P.W.1 is Vijay More, who acted as panch for the seizure of clothes of the deceased under panchanama Exh.14. P.W.2 is Ramdas Mahale, who acted as panch for the Inquest Panchanama Exh.16 on the dead body of the deceased and the spot panchanama Exh.17. P.W.3 is Kalu Wagh, the father of deceased Shali who had lodged missing report. P.W.4 is Rajendra Bhati, the photographer who had taken photographs of the dead body on the hillock when it was discovered at the instance of the accused. P.W.5 is Hirabai Chaudhary, who had last seen the couple while going towards the hillock. P.W.6 is Kaushabai Rehere, who had also last seen the couple while going towards the hillock. P.W.7 Bhaurao Ghumse and P.W.8 Pundlik Thakrey, both of whom had acted as panch for the discovery of axe

(article 16) had turned hostile. P.W.9 is Prabhakar Baviskar, the Special Judicial Magistrate who recorded the confession of the accused under Section 164 of the Cr.P.C. P.W.10 is Dr. Ramesh Korgaonkar, who performed autopsy on the dead body. Lastly, P.W.11 is A.P.I. Gavali who investigated the case. The defence of the accused was of total denial.

6. After considering the entire evidence on record, the learned Addl. Sessions Judge, Nashik by his Judgment and Order dated 20th February, 1995 convicted the appellant for the offence under Section 302 of IPC and sentenced him to RI for life and to pay a fine of Rs.500/- in default RI for six months. The said judgment and order of conviction recorded against the appellant is under challenge in this appeal filed by the appellant.

7. The learned Advocate appearing for the appellant challenged the order of conviction mainly on the ground that the dead body of the deceased could not have been identified as it was almost in the form of a skeleton and, therefore, appellant should not have been convicted.

8. We have gone through the entire evidence on record and find following circumstances have been proved by the prosecution:-

(a) The appellant and Shali had left the house in the morning of 31st May 1993 for going to the hillock by carrying axe and sickle respectively for fetching firewood leaving the children in the house of parents-in-law as usual.

(b) As the couple did not return home on that day, father of Shali lodged missing report at the police station about the missing of appellant as well as his wife Shali.

(c) Appellant was absconding for a period of one month from the date he had left the house in the company of his wife until he was apprehended by the police at the motor stand of village Vani.

(d) Appellant was last seen together leaving along with deceased Shali and

thereafter her dead body was discovered.

(e) Appellant who had left the house with an axe had hidden the axe in the field of Sampat Jadhav which was discovered at his instance.

(f) Appellant's confession was recorded under Section 164 of Cr.P.C. by the Special Judicial Magistrate in which he had confessed his guilt.

(g) There was motive for the murder in as much as the appellant was suspicious about the illicit relationship of Shali with her sister's husband Devidas whom he had seen in compromising position.

(h) Appellant had failed to explain the disappearance of his wife except by pointing out to the place from where her dead body was recovered.

9. P.W.3 Kalu Wagh, the father of deceased Shali has deposed in his evidence that the couple was

residing in his neighbourhood along with their three children. They were working as labourers at a brick kiln. They used to go to collect firewood on the hillock. On 31st May, 1993 they had left the house at about 6 a.m. leaving the children in the house of P.W.3 and thereafter they did not return until appellant was accosted by the police on 2nd July 1993. As the couple did not return on that day, he had lodged missing report at the police station which is produced at Exh.20. In the said missing report there is mention that on 31st May 1993 the couple had left at 6 a.m. for going to Markande 'Dongar' i.e. Markande Hillock and they had not returned till 9 O'clock on 1st June 1993. Thus it is significant to point out that on 1st June 1993 father of deceased had stated in his missing report that the couple had gone to the Markande Hillock on 31-5-1993 where the dead body of Shali was discovered at the instance of appellant. The dead body was found in a decomposed state i.e. almost in a skeleton form with only some flesh attached to the bones. The decomposed condition of the dead body also supports the prosecution case that the deceased was missing from 31st May, 1993 on which date her murder must have been committed.

10. P.W.3 Kalu is supported by two witnesses from the village. They are P.W.5 Hirabai Chaudhary and P.W.6 Kaushabai Rehere. P.W.5 Hirabai has deposed that on that day she was also going to Markande Forest along with Kaushabai and Suman when she saw Shalibai accompanied by her husband i.e. the appellant walking ahead of her. Similarly, P.W.6 Kaushabai has deposed that on that day she was also going to Markande Forest for collecting firewood along with Hirabai P.W.5 and Sumanbai and Shalibai and accused were walking ahead of them. She has deposed that Suresh and Shali went to the top of the Markande Forest while they stayed on the plain portion. She has also deposed that accused was carrying an axe in his hand while Shalibai was carrying sickle and a rope in her hand. It is significant to point out that near the place of the dead body rope as well as sickle was found which were carried by Shali for the purpose of collecting firewood. Even complainant Kalu has stated that they had gone to the said hillock for the purpose of collecting firewood.

11. The appellant was absconding for a period of one month until he was traced by the police at the motor stand on 2nd July 1993. Since the accused was

seen last in the company of deceased he ought to have known the whereabouts of the deceased alive or dead. When he was apprehended by the police and taken to the police station, it was he who led to the discovery of the dead body of deceased which was recovered from the same hillock. As per the missing report and the eivdence of P.W.5 Hirabai and P.W.6 Kaushabai, appellant had gone for collecting firewood along with his wife Shali. The accused who ought to have known about the whereabouts of his wife had no other explanation to offer except by discovering her body from the top of the hillock called Markande Hillock. The fact that the dead body was discovered at the instance of the accused who alone had the knowledge about the place where the dead body was lying is the strongest circumstance against the appellant. In the case of Balwinder Singh @ Dalbir Singh v. State of Punjab reported in **(1987) I SCC 1** it was held by the Apex Court that circumstnaces of last seen together, abscondence and recovery of the dead body at the instance of the accused are sufficient to hold the accused guilty of the offence of murder.

12. Apart from leading to the discovery of the dead body, appellant has made confessional statement

before the Special Judicial Magistrate Baviskar P.W.9 which was recorded under Section 164 of Cr.P.C. The said confession was recorded on 11th July 1993. The appellant was initially produced before the said Magistrate on 9th July 1993 for recording confession. He was initially produced at 2 p.m. on that day. The Magistrate after asking the policemen to go out and after closing the door and ensuring that the voice from the room was not audible outside the room nor the Magistrate or the accused were visible from outside, started questioning the accused in order to satisfy himself whether the accused wanted to make confessional statement voluntarily or whether the accused was given any temptation to make any confession. The said preliminary enquiry was made by the Magistrate which is produced on record at Exh.49. The reading of Exh.49 shows that the Magistrate was satisfied himself that no pressure was used nor any temptation was given to the accused for making confessional statement and the accused wanted to make the confession voluntarily. After satisfying himself that the accused wanted to voluntarily make a statement, Magistrate had also informed the accused that he was not bound to make the confession and the said confession could be used against him and that even if he refused to make a confession he would not

be sent back to police custody. After satisfying himself, the Magistrate had given two days time to the accused for reflection. Thereafter the accused was produced before him on 11th July 1993 at 2 p.m. Again after satisfying that accused was making confession voluntarily, he proceeded to record the confession as per Exh.50. In the said confession the accused has stated that he was staying with his wife Shali at Vani along with children. He and his wife were working as labourers. Eight days prior to the date of incident i.e. 31st May, 1993 he had seen his wife in compromising position along with her sister's husband Devidas, who after seeing him ran away from the back door. That time he slapped his wife and thereafter thought of killing her. On the date of the incident he took his wife to Markande Hillock at about 6 a.m. for collecting firewood. He took her near a tree and hit her on her head with a wooden stick. After she fell down crying, he assaulted her on her neck with an axe, as a result of which his wife died instantly. He threw away the stick on the spot and left the dead body and ran away with the axe and was hiding for a period of one month until the day he was accosted by the police.

13. Apart from the fact that the Magistrate had before recording his confession taken all the necessary precautions as required under law to ensure that the confession made by the accused was voluntary and was not being given under any pressure or temptation, the contents of the confessional statement are also consistent with the prosecution case in as much as appellant admits that he had taken his wife to the said hillock for the purpose of collecting firewood at about 6 a.m. on the date of the incident leaving the children to the care of her parents. He has also stated about the motive. After he murdered his wife, naturally he had to hide the axe which was hidden by him in the field from where it was discovered at his instance. No doubt there was no blood found on the said axe as per the C.A. report. However, the use of axe by him and subsequently hiding the same in some other person’s field is consistent with the prosecution case that he had gone to the said hillock along with an axe which was required for the purpose of collection of firewood. Though the recovery of the axe is not supported by both the panchas, however, there is nothing against the I.O. to doubt his evidence about the said discovery. In the case of State, Govt. of NCT of Delhi v. Sunil & anr. reported in **(2001) I SCC 652** it was held that

the discovery panchanama need not be attested by any independent witness and mere absence of independent witness to prove the discovery pursuant to the memorandum of statement of the accused recorded by the Investigating Officer is not a sufficient ground to discard the evidence of discovery. It is for the accused to show that the discovery evidence led by the Investigating Officer is unreliable.

14. From the confession of the accused the prosecution has proved the motive for the offence. Though the accused had left and was seen for the last time in the company of the deceased, he had not offered any explanantion about the whereabouts of the deceased, except by showing her dead body. The appellant did not bother for a period of one month about the disappearance of his wife. He neither made enquiry nor visited his in-laws inquiring about his wife or even about his own children, which obviously shows his guilty mind.

15. The prosecution has led evidence of panchas and the photographer to show that the dead body was recovered at the instance of the accused from the

hillock where, according to the prosecution case, appellant had gone along with his wife. P.W.2 Ramdas Mahale had accompanied the police to the Markande Jungle along with the accused and the father of deceased. The accused had led the police and the panchas to the spot where a decomposed dead body was found from which foul smell was emitting. The dead body was lying near a tree. Near the dead body a sickle, a bundle, a rope, a pair of slippers and broken pieces of bangles were found. There was also a piece of saree. The hair of the dead body was also lying near the body. They were attached under panchanama Exh.17. The inquest panchanama on the dead body was drawn. The said evidence is also supported by the photographer P.W. 4 Rajendra Bhati, who was also an independent witness, who was taken by the police for the purpose of taking photographs, which are produced on record at Exh.22 to 39 along with the negatives.

16. The dead body was sent for post mortem which was performed by Dr. Koregaonkar P.W.10. He has examined all the bones and the dead body which was in a skeleton form and given detailed report in the post mortem notes. Though he could not give the cause of

death because of the decomposed condition of the dead body, he has mentioned that the dead body was of a human being. He has also deposed in cross-examination that all the bones were of human being and the skull appeared to be of a female. He had noticed 13 upper teeth and eight lower teeth in the mouth of the dead body which were indicative of human body. There were eighteen ribs in the dead body which also indicate that it was a skeleton of human body. He had sent the bones to the department of Anatomy, Govt. Medical College, Bombay for the examination of bones. The said report is produced at Exh.57, according to which report also the bones belonged to a human being and the probable sex of the deceased is given as that of a female. No opinion was given by the department of Anatomy also about the cause of death. Since medical report does not say with certainty that the dead body was of a female but only probability is shown, it is argued on behalf of the accused that it cannot be said that the dead body was of Shali. However, the finding of bunch of female human hair, broken pieces of bangles, torn piece of saree and torn blouse worn by the dead body sufficiently indicates that it was the dead body of a female. P.W.3 Kalu, the father of deceased, had identified the dead body on the basis of clothes found on the dead body and the pieces of

bangles which were found near the dead body. The said witness has also identified a metal bangle which the deceased used to wear. His evidence along with his missing report Exh.20 read in juxtaposition with the medical evidence and the report of department of Anatomy Exh.57 leaves no doubt that the skeleton of a dead body which was discovered at the instance of appellant was of none other than the wife of the appellant by name Shali, the daughter of P.W.3 Kalu.

17. In our view the aforesaid evidence led by the prosecution leaves us in no manner of doubt that the dead body which was discovered at the instance of the appellant was of his wife Shali and it was the appellant who had caused her death by assault with an axe on the top of the hillock called Markande Jungle where he had taken her in the morning of 31st May, 1993. The confession made by the accused is corroborated by the other evidence and circumstances on record. We, therefore, have no hesitation in confirming the order of conviction and sentence recorded by the Sessions Court, Nashik by the judgment and order dated 20/2/1995 in Sessions Trial No.116 of 1994.

18. In the result, the order of conviction and sentence recorded by the III Addl. Sessions Judge, Nashik on 20/2/1995 against the appellant-accused in Sessions Trial No.116 of 1994 is confirmed and the appeal is dismissed. The appellant shall surrender to his bail bonds forthwith.

(S.S. Parkar, J.)

(Anoop V. Mohta,J.)